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The non-identity problem in climate ethics: A restatement

by Jasmina Nedevska

Abstract: *This article justifies and restates the non-identity problem (NIP) in relation to climate change. First and briefly, I argue that while there is often good reason to set the NIP aside in practical politics, there can be areas where a climate NIP will have practical implications. An instructive example concerns climate change litigation. Second, I argue that there are three particular circumstances of a climate NIP that may set it apart from the more established NIP in bioethics. These differences regard interaction, numbers, and agency respectively. Third, I discuss the premises and conclusion of a climate NIP, modifying an account in bioethics by David Boonin (2014).*

Keywords: Non-identity problem, Climate change, Intergenerational duties, Environmental duties, Derek Parfit

This article justifies and restates the non-identity problem (NIP) in relation to climate change. Some climate ethicists who engage with the NIP assume that the problem is an obstacle to convincing people to live by intergenerational climate duties. The idea seems to be that calls for long-term climate measures lose force if the argument does not fully stand up to scrutiny. Others, however, point out that the NIP, being a purely philosophical problem, has no implications for individual moral practice or common policy. Indeed, the latter theorists claim, treating the problem as if it had such implications is counterproductive (Tremmel 2018). My point of departure occupies a middle ground. While there is often good reason to set the NIP aside in practical politics, there can be unforeseen and/or delimited areas where a climate NIP (C-NIP) will have practical implications. As I argue below, a recent case of climate change litigation may serve as an instructive example.

The purpose of this article is to facilitate further discussion, among climate ethicists and others, on the components and possible implications of the non-identity problem. The paper is structured as follows.

In the upcoming section, I describe how an established concept of harm, and its inapplicability, had significant impact on the judge's reasoning in the case *California vs. BP* (2018). With regard to future people, I argue, a similar inapplicability could stem from non-identity.

Thereafter, I describe how the *circumstances* of a climate NIP will often differ from the more established NIP in bioethics. I identify three important differences, regarding *interaction*, *numbers*, and *agency*, respectively. Because of these differences, a climate NIP can be seen as more difficult to handle.

Finally, I map out and discuss the *premises* and *conclusion* of the NIP in a climate version, modifying an account in bioethics by David Boonin (2014). Following Tremmel (2018), I refer to this problem as the Climate-NIP (C-NIP for short).

Climate change litigation

In the case *California v. BP*, the cities of Oakland and San Francisco (“the Cities”) turned to the United States District Court for the Northern District of California, filing a lawsuit against BP and four other energy companies: Chevron, ConocoPhillips, Exxon and Royal Dutch Shell. Collectively, these companies are responsible for over 11% of the accumulated pollution of carbon dioxide and methane since the Industrial Revolution; they are also deemed the world's five largest fossil fuel producers at present. According to the plaintiffs, the energy companies should be held liable for a continued marketing of fossil fuels long after learning that such fuels contribute to climate change. The Cities required, in this vein, that the companies be directed to fund a programme to build sea walls and other infrastructure to protect persons and property from global warming-induced harm (Seinfeld 2018: 25, 28).

District Judge William H. Alsup did not consider the case a matter for state courts and dismissed it for this reason. At first glance, this simply means that the case will be tried within the US federal court system instead. However, the crucial criterion for Judge Alsup concerned the applicability of a concept of harm. “For a court to exercise specific jurisdiction over a non-resident defendant,” the judge reasoned, pointing to precedent, “the claim must be one which ‘arises out of or relates to’ the defendant’s forum related activities” (*California v. BP* 2018: 5). This means that if the Court of California is to judge in the case involving the energy companies, the residents of the Cities must show that climate change (or their own climate change-related needs) “arises out of or relates to” the companies’ marketing of fossil fuels *in California*.

While there is often good reason to set the NIP aside in practical politics, there can be unforeseen and/or delimited areas where a climate NIP will have practical implications.

The Cities here pointed to “significant activities of defendants’ alleged agents and subsidiaries – such as the transportation and sale of gas to California consumers – which amount to the purposeful direction of activities towards the forum.” Alsup observed, however, that it is “manifest that global warming would have continued in the absence of all California-related activities of defendants. Plaintiffs have therefore failed to adequately link each defendants’ [sic] alleged California activities to plaintiffs’ harm” (*California v. BP* 2018: 5). The plaintiffs’ problem was not that they needed to show that the relevant companies alone gave rise to global warming. Instead, the Cities were required to show that the companies’ conduct is a “but for” cause of their harm. Alsup argued further: “nowhere do plaintiffs assert that sea rise would not have occurred had any defendant reduced or refrained from fossil fuel production in California (or elsewhere in the United States)” (*California v. BP* 2018: 7).

This is not the same problem as the non-identity problem. The example raises questions regarding imperceptible consequences and collective action. The non-identity problem, on the other hand, is not fundamentally due to our incapacity to consider small contributions to harm but to future persons' lack of fixed identities. However, the example goes to show that philosophical obstacles to apply a concept of harm may matter in practice and with regard to climate change. Further, non-identity seems to have a similar implication as the collective action in the example above: it renders an established notion of harm inapplicable. Hence, given that a court case concerns distant future people, non-identity may affect, for instance, which forum and what verdicts we can expect. Below, I briefly introduce the non-identity problem.

The non-identity problem

The philosophical problem referred to as the non-identity problem seems to show that there are no intergenerational duties with regard to the climate.

The problem was identified by an increasing number of scholars in the late 1970s and early 1980s. In *Reasons and Persons* (1984), Derek Parfit would give the problem a thorough and influential treatment. A basic observation made by the non-identity scholars is that personal identity depends on by whom and when a person is conceived. In turn, who meets whom and when procreation takes place depend on a countless number of actions, including a society's choice to live sustainably or not. Future persons cannot, therefore, be rendered worse off by our unsustainable living. Rather, the particular people who will exist in the future will do so as a result of how we decide to live our lives. Moral theory, as well as common sense, typically relies on person-affecting reasons – an act is seen as being morally wrong if it renders another person worse off in some way. In this case, however, such a person-affecting view seems to imply, counterintuitively, that it would not be morally wrong to leave behind an unsustainable climate. This would mean that there are no intergenerational climate duties.

Philosophical obstacles to apply a concept of harm may matter in practice and with regard to climate change. [G]iven that a court case concerns distant future people, non-identity may affect, for instance, which forum and what verdicts we can expect.

Future people's non-identity, many scholars insist, should make no difference to our judgement in this and similar cases. For around four decades, various moral arguments have, therefore, been tried as an objection to intergenerational wrongs. Some scholars aim to keep a person-affecting view in these efforts. Others consciously assume an alternative, impersonal view. Predominantly, attempts of the latter sort have been utilitarian in character. According to utilitarianism, the right act is the one that produces the most well-being, summed impersonally across all the people affected. This sort of approach can likewise lead to counterintuitive conclusions, including the so-called repugnant conclusion, given that different acts also produce different numbers of people (Parfit 1984: ch. 17). So far, no suggestion of how to approach non-identity seems to be considered perfect. Using Parfit's expression, we are still looking for "Theory X". Theory X would solve the non-identity problem or circumvent the non-identity problem without running into other problems, such as the repugnant conclusion.

While some dismiss the practical relevance of the problem, typically in connection to climate change, I have here suggested that there is reason to take the non-identity problem into some account with regard to the climate. In the following, I provide a more detailed restatement of the non-identity problem in relation to climate change.

The circumstances of the C-NIP

In the upcoming sections, I identify particular circumstances that will often set the C-NIP apart from a more discussed version in bioethics. First, however, we shall understand the more established version of the non-identity problem better.

Consider the frequently employed and recast example of Parfit's, referred to as the "14-year-old girl". The 14-year-old is assumed to want a child; she is not yet pregnant but wishes to conceive. The girl is told she should wait and have the child later: "that would be better for him," her close ones claim, "since you would be able to give him a better start in life" (Parfit 2011: 220). Nonetheless, she goes ahead and has a child, and gives him a bad start in life.

Can we uphold, the non-identity literature asks, that she did anything wrong? Stipulate further that neither the young mother herself nor the rest of society suffers from the decision. Although we may still want to say that she did something wrong vis-à-vis her child, we do not seem to be in a position to claim that her decision was in fact worse for her child. A reason behind this is that the child's very identity depends on when he was conceived. "If [the 14-year-old] had waited," Parfit points out, "this particular child would never have existed. And, despite its bad start, his life is worth living" (Parfit 1984: 359). Since the child is not worse off than he would otherwise have been, it is hard to say that he has been harmed by his mother's act. It then proves to be difficult to say that the 14-year-old did anything wrong or even objectionable with regard to how her child's life turned out.

In important respects, the climate case may differ from the case of the 14-year-old. I bring up three possible differences here, regarding *interaction*, *numbers*, and *agency*, respectively.

The non-identity problem is conceived of as a problem because person-affecting assumptions, which many hold to be true, bring one to a conclusion that seems false. In order to account coherently for intergenerational climate duties, one would need to show that one can deal with this problem. In one way or another, one will need to come up with an argument where identity makes no difference to the conclusion.

Below, I state some central respects in which the climate case *differs* from that of the 14-year-old girl. The differences shed light on particular requirements that climate change puts on an account of intergenerational duties.

Parfit refers to a related example as "risky policy". We could here think of the risky policy as high emissions of greenhouse gases (GHG), which cause climate change. This may convey rising sea levels, extreme weather phenomena or other dangerous events, of which some will happen in a distant future. These are events we see as harmful if or when they strike contemporary people. There is a risk, in this case, that a future catastrophe or degradation will have a negative effect on the quality of future people's lives. At the same time, society's choice to emit GHG for various purposes

also affects to some extent who will live in the (further) future. We thus seem unable to say that the future persons whose living conditions will be affected negatively by high emissions will thereby be made worse off. Our *prima facie* inability to appeal to a notion of harm thus makes the environmental case similar to that of the 14-year-old girl.

Yet, in important respects, the climate case may differ from the case of the 14-year-old. I bring up three possible differences here, regarding *interaction*, *numbers*, and *agency*, respectively.

Interaction

First, the present generation will experience *no interaction* with the future generation concerned. The choice of the 14-year-old has been described as a “direct” case, as her choice “directly determines which particular person will exist after the choice is made” (Boonin 2014: 5). Contributing to climate change, on the other hand, has been described as an “indirect” case, in which a choice is part of “a complex chain of events that eventually have an equally decisive effect on which particular people exist after the choice is made” (Boonin 2014: 5). This is connected to the fact that climate change is caused by a collective agent, or the joint behaviour of many individual agents, to which I return below. But the causal complexity also removes the possible object of duty from immediate consideration. While the 14-year-old’s choice concerns an immediate descendant who is likely to interact with her at some point, many of those who in the climate case would come to experience a degraded environment are distant descendants whose lives will have no effect on us or our present societies. It could be argued that less or no interaction characterises the relationship between many contemporaries who are distant from one another in space. Yet, with regard to distant future people, our interaction with them is not minimal but non-existent; it is not an open possibility but impossible.

The choice of the 14-year-old is thus a simple “different people choice”, while inducing climate change is, in addition, a “different number choice”.

With regard to interaction, the climate case can be understood as a more difficult case than that of the 14-year-old. For example, approaches to the non-identity problem that appeal to special duties given parent-child interaction may not apply here (Boonin 2014: 7). With regard to the C-NIP, it is thus particularly important that the account should hold true in a case with no interaction between present and future people.

Numbers

Second, the future people in the climate case are not stable in terms of *numbers*. We know that ordinary choices (without the feature of non-identity) are choices concerning the same people and that, on the contrary, the options of the 14-year-old yield different persons. Yet, it is commonly assumed that the 14-year-old will either conceive one person now or one person later. In the climate case, on the other hand, it is likely that different ways of structuring society will also yield different numbers of people. Given different scenarios, we can often estimate future numbers of people. The choice of the 14-year-old is thus a simple “different people choice”, while inducing climate change is, in addition, a

“different number choice”. The two cases could be depicted so that they do not differ in this way. Yet, a typical climate case will require that an account of intergenerational duties holds true regardless of how many people are estimated to live in future scenarios, while the typical bioethics case does not raise this issue (Parfit 2010).

Agency

Third, the climate case expounded here can be described as one of *collective agency*. We are faced with many individual acts that – taken together – cause detrimental global warming. It has been argued that removing or adding one separate individual act does not make any difference at all to the outcome (Sinnott-Armstrong 2005; Maltais 2013; Kingston/Sinnott-Armstrong 2018). An implication of this would be that these individual acts cannot possibly be described as being morally wrong. In turn, whether and how a collective act in general, or a collective act of emitting greenhouse gases in particular, can or should be described as in itself intentional and thus subject to moral scrutiny is an ongoing discussion in the social sciences (List/Pettit, 2013, 2006; O’Madagain 2012). It might be that there is no act there that can be subject to moral scrutiny, and if there is, it is not clear if and how we should use conventional resources in moral theory to evaluate such an act. The C-NIP may thus require that one addresses questions of collective action (which arose independently in the climate litigation case above).

While the 14-year-old’s choice concerns an immediate descendant who is likely to interact with her at some point, those who in the climate case would come to experience a degraded environment are distant descendants whose lives will have no effect on us or our present societies.

Restating the C-NIP

In the *Stanford Encyclopedia of Philosophy*, a practical intuition stated to give rise to the non-identity problem is the intuition that “the existence-inducing acts under scrutiny in the various non-identity cases are in fact *wrong*” (Roberts 2015). In a fairly recent book, which appears to be the most comprehensive overview of the non-identity literature so far, David Boonin (2014: 3-5) similarly describes the efforts to deal with the non-identity problem in terms of accounting for a moral wrong.

It is worth noting that there are other relevant conclusions we may want to draw. More modestly, we could want to account for the intuition that future people’s climate matters (at all). A bolder conclusion would be that a nation state (or other political entities) may legitimately act to safeguard future people’s climate (Nedevska 2018).

Yet, a moral wrongdoing intuition appears to be the most common one for non-identity scholars to take on. I will here speak of C-NIP in a similar manner. I shall wish to account for the intuition that *leaving future generations with an unsustainable climate is morally wrong*, and describe the difficulties to do so in more detail. A starting point for a detailed formulation of any version of the non-identity problem is Parfit’s “time-dependence claim”. He states that “[i]f any particular person had not been conceived when he was in fact conceived, it is *in fact* true that he would never have existed” (Parfit 1984: 351, emphasis in original). This,

in turn, has the strange implication that “lowering the quality of life might be worse for no one”. Parfit argues:

“Suppose that we are choosing between two social or economic policies. And suppose that, on one of the two policies, the standard of living would be slightly higher over the next century. This effect implies another. It is not true that, whichever policy we choose, the same particular people will exist in the further future. Given these effects of two such policies on the details of our lives, it would increasingly over time be true that, on the different policies, people married different people. And, even in the same marriages, the children would increasingly over time be conceived at different times. As I have argued, children conceived [at different times] would in fact be different children. Since the choice between our two policies would affect the timing of later conceptions, some of the people who are later born would owe their existence to our choice of one of the two policies. If we had chosen the other policy, these particular people would never have existed.” (Parfit 1984: 361)

The claim is not very controversial – as Parfit tells us, it is quite “easy to believe” (1984: 361). But believing this claim will have us accept the first in a series of premises that can lead to various counterintuitive conclusions. Boonin (2014) distinguishes five such premises, in a case similar to that of the 14-year-old girl – a woman who chooses under what circumstances to conceive. Here, I expound a partly similar (but in important respects different) non-identity argument in a case regarding the emissions of GHG. The premises are based on common *prima facie* beliefs, and many would on reflection modify at least some of these. The argument is neither provided as perfectly sound, nor as representative of what most people would actually believe. The argument allows us, rather, to categorise and test the assumptions of theories, precisely as responses to the non-identity problem.

[L]eaving future generations with an unsustainable climate is morally wrong.

The first premise

Let us imagine a present generation facing the kind of choice described by Parfit above. Let us assume that the members of this generation must choose whether to keep emitting high levels of GHG or to lower their emissions. If they choose High Emissions, this will destabilise the Earth’s ecosystems in a long-term perspective. We may refer to the present population as Generation One (G1). The choice of High Emissions would grant G1 more material benefits, as compared to Low Emissions, which would bring about less material benefits within their lifetimes. If High Emissions is chosen, this will lead to an unsustainable climate. A generation in a later century, Generation Five (G5), will experience a significantly reduced quality of life due to, let us only say, a natural disaster. G5’s lives will remain worth living, but just barely. If, on the other hand, G1 chooses Low Emissions, this will (according to the time-dependence claim) yield a different set of people in the future. We may refer to this set as Generation Five* (G5*). These people’s environment will be sustainable, and they will not have to endure the disaster that would strike G5.

Assume that – aware of the risks – G1 still chooses High Emissions. As a result of their choice, a natural disaster hits G5 and significantly reduces G5’s living standards. Many, if not most of us have the feeling that G1 did something morally wrong. Yet, the people belonging to G5 are not made worse off by G1’s choice of High Emissions (Boonin 2014: 3). If G1 had chosen Low Emis-

sions, the people of G5 would not have existed at all. Instead, there would have been G5*, an entirely different set of people.¹ Thus, although G5’s living standards have been reduced, they have not been made worse off than they would otherwise have been, had G1 not committed their act. We may then formulate a first premise in a non-identity argument as follows:

P1: Generation One’s act of High Emissions rather than Low Emissions does not make the individuals of Generation Five worse off than they would otherwise have been.

The second and third premises

Rendering somebody worse off can be considered a “common sense” definition of harm.² For an act to harm someone, many will say, it must make that person worse off than they would have been, had the act not been committed.³ We may here speak of P2, as follows.⁴

P2: A’s act harms B only if A’s act makes B worse off than B would otherwise have been.

From these two premises alone, we are able to deduce that Generation One’s act of High Emissions rather than Low Emissions does not harm the individuals of Generation Five.

In order to describe the problem correctly, we will need to make a further stipulation at this point: that G1’s act does not harm anyone other than G5. In many actual cases of environmental hazards, the consequences are already faced by present generations. It could thus be argued that G1 harms (some of) its own members. Yet, as Boonin argues, it is still reasonable to add this kind of stipulation. When we are faced with the case of the natural disaster hitting G5, and think that G1 did something morally wrong, we do not ask ourselves whether the people of G1 also inflicted some harm on themselves (or require them to have done so in order to say that what they did was morally wrong). What we believe is that G1 did something morally wrong with regard to future people, independently of whether G1 caused any harm to itself (cf. Boonin 2014: 4). That is the kind of intuition we are interested in here. We are interested in whether there are intergenerational climate wrongs; whether there are other kinds of climate wrongs is not our concern. This does not mean that we do not care about present people’s situation at all. It only means that, right now, we are theoretically interested in the intergenerational aspect of the climate case. So, we shall formulate, for the sake of enquiry, a third premise, P3.

P3: Generation One’s act of High Emissions rather than Low Emissions does not harm anyone other than the individuals of Generation Five.

The fourth and fifth premises

The three premises hitherto accounted for entail that Generation One’s act of High Emissions rather than Low Emissions does not harm anyone.

At this point, Boonin would ask us to take into account a principle that many people accept, at least at first glance, namely a moral “harm-principle”. His description of this thought is that, if an act harms no one, then the act is not morally wrong. Edward Page, for example, refers to an “intergenerational harms claim” where a High Emissions policy would be “wrong because it harms

future persons” (Page 1999: 112). Roberts writes in the *Stanford Encyclopedia of Philosophy*: “an act can be wrong only if that act makes things *worse for*, or (we can say) *harms*, some existing or future person” (2015). Similarly to Boonin, we may break this principle down into two premises: the claim that, if an act harms no one, then the act does not wrong anyone, and the claim that, if an act does not wrong anyone, then it is not morally wrong (Cf. Boonin 2014: 4). First, that is, we get P4.

P4: If an act does not harm anyone, then the act does not wrong anyone.

Future persons are here unidentifiable not because it is difficult to know or see who they are, but because they still lack identities altogether. Therefore, their identities are also contingent on our actions over time.

This asserts that, if an act does not harm a particular person, then no one has a personal claim of being wronged.

We also get a premise saying that, if no particular person has such a claim, then the act is not morally wrong. We may formulate this as P5.

P5: If an act does not wrong anyone, then the act is not morally wrong.

The counter-intuitive conclusion

The five premises together bring us to our conclusion, C.

C: Generation One's act of High Emissions rather than Low Emissions is not morally wrong.

Some have argued that the non-identity of future people is unnecessarily made out to be troublesome. It has been pointed out, for example, that we need not look to the future to find examples of duties to unidentifiable persons. Joel Feinberg has argued:

“We can tell, sometimes, that shadowy forms in the spatial distance belong to human beings, though we know not who or how many they are; and this imposes a duty on us not to throw bombs, for example, in their direction. In like manner, the vagueness of the human future does not weaken its claim on us in light of the nearly certain knowledge that it will, after all, be human.” (1981: 148).

But we have now seen that future people's non-identity can have serious moral implications. This non-identity could be described as ontological, instead of epistemological. Future persons are, in this regard, unidentifiable not because it is difficult to know or see who they are, but because they still lack identities altogether. Therefore their identities are also contingent on our actions over time. In the argument above, we have seen how this time-dependence renders a common conception of harm inapplicable and forces us to draw a counterintuitive conclusion. Given the premises, a generation's act of emitting high levels of GHG, rendering future people's climate unsustainable, is not morally wrong.

Furthermore, the growing phenomenon of climate change litigation shows that the inapplicability of a concept of harm can have practical implications. I initially discussed a case marked by a claim on behalf of present people, where the problem was one of collective action. But in cases involving future people, the inapplicability of a concept of harm could stem from non-identity. In the case discussed, Judge Alsup reasoned that since the defend-

ants' activities in California (and elsewhere in the United States) had not made Californian citizens worse off than they would otherwise have been (a factual observation analogous to P1), there is no causal link between the defendants' actions and the plaintiffs' alleged harm (the judge subscribing, thereby, to P2).

Other premises could deserve our particular attention: P4, which states that harming a particular person is the only way one could wrong him or her; and P5, which states that wronging particular persons is the only way one could commit morally wrongful acts. In order to conclude, coherently, that an intergenerational wrong has been committed, either P1, P2, P4 or P5 needs to be convincingly rejected. If a judge accepts all five premises, it implies that a defendant cannot be said to wrong in relation to distant future generations.

Attention to the non-identity problem is thus warranted, not only for philosophical reasons but because these premises may play a part in important decisions about climate change.

Notes

1 See also Edward Page's “identity dependence claim”: “the adoption of the Depletion Policy is a remote, but necessary, condition of the Depletion People coming into existence and leading lives which are worth living” (Page 1999).

2 Lukas Meyer (2003), makes a helpful comparison between the two worse off-notions, *diachronic* and a *subjunctive-historical* harm, showing why P2 (a version of the subjunctive-historical notion) seems preferable with regard to future generations. “A diachronic notion of harm: Having acted in a certain way (or having refrained from acting in that way) at a time t_1 we thereby harm someone if and only if we cause this person to be worse off at some later time t_2 than the person was before we acted in this way, that is, before t_1 ” (Meyer 2003: 148).

“A subjunctive-historical notion of harm: Having acted in a certain way (or having refrained from acting in that way) at a time t_1 , we thereby harm someone only if we cause this person to be worse off at some later time t_2 than the person would have been at t_2 had we not [acted in this way] at all” (Meyer 2003: 148). I have exchanged “interacted with this person” for “acted in this way”. It is quite obvious why for our purposes we should avoid a diachronic notion of harm. At the time before our act, which takes place at t_1 , future generations do not exist at all. We thus lack a point of reference that we may compare to the state of future people at t_2 , the time at which they experience the consequences of our act. Among these variants, then, a subjunctive-historical understanding of harm will seem more adequate when dealing with future generations. If we accept the time-dependence claim, however, the subjunctive-historical notion of harm (simplified in P2) seems ineffective. G1's act in the case of Depletion gives rise to G5 who would otherwise not exist. G5 will thus not be worse off with a deteriorated environment than they would otherwise have been. We are then unable to appeal to our notion of harm to account for the act as morally wrong.

3 Similarly, Page has referred to a “No Worse Off Claim”: “an act harms somebody only if it makes a particular person worse off than they would have been had the act not been performed” (Page 1999: 112).

4 Boonin expresses this differently: “If A's act harms B, then A's act makes B worse off than B would otherwise have been” (Boonin 2014: 3). I find that formulation less pedagogical, as it is not as clear that the concept of harm is the *definiendum* (what is being

defined) while the notion of making somebody “worse off” is the *definiens* (what defines it).

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